

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BOSTON PARENT COALITION FOR
ACADEMIC EXCELLENCE CORP.,

Plaintiff,

v.

THE SCHOOL COMMITTEE OF THE
CITY OF BOSTON, ALEXANDRA
OLIVER-DAVILA, MICHAEL O'NEILL,
HARDIN COLEMAN, LORNA RIVERA,
JERI ROBINSON, QUOC TRAN, ERNANI
DeARAUJO, and BRENDA CASSELLIUS,

Defendants,

THE BOSTON BRANCH OF THE NAACP,
THE GREATER BOSTON LATINO
NETWORK, ASIAN PACIFIC ISLANDER
CIVIC ACTION NETWORK, ASIAN
AMERICAN RESOURCE WORKSHOP,
MAIRENY PIMENTAL, and H.D.,

Defendants-Intervenors

Civil Action No. 1:21-cv-10330-WGY

**INTERVENORS' STATUS REPORT AND
STATEMENT OF ADDITIONAL MATERIAL FACTS**

Intervenors, the NAACP – Boston Branch, the Greater Boston Latino Network, Asian Pacific Islander Civil Action Network, Asian American Resource Workshop, Maireny Pimentel, and H.D. (hereinafter “Intervenors”), have worked diligently with Plaintiff and Defendants since the last hearing in this matter to develop a Joint Agreed Statement of Facts.

Although the Parties were able to reach agreement on a significant number of issues, some disagreements remain. Intervenors assert that the facts set forth in this filing are relevant and material to the Court’s resolution of this matter and are not adequately addressed in the Joint

Agreed Statement of Facts. Defendants agree to all paragraphs of Intervenor's Statement of Additional Material Facts, except paragraphs 3, 4, 12, 19, and 29, and stipulate to the inclusion in the record of all exhibits included in Intervenor's supplemental exhibits except Exhibit 7, Exhibit 8, and Exhibit 22. Plaintiff stipulates to the inclusion in the record of the following of Intervenor's supplemental exhibits: Exhibits 9, 10, 11, 20, 46, 47, 48, and 50. All parties reserve the right to make any arguments or objections regarding the relevance, importance or weight to be given to the information contained in the attached documents.

The facts that Intervenor's propose herein generally address the following topics:

- The impact of the COVID-19 pandemic and events that preceded it necessitated creating an interim policy for determining admissions into the highly selective public schools;
- The disproportionate impact of the COVID-19 pandemic on Boston's low-income students and students of color, exacerbating the need for an interim policy for determining admissions into the highly selective public schools;
- The ongoing, long-standing discussion surrounding the socioeconomic, geographic, and racial diversity of Boston's highly selective public schools;
- BPS's selective public schools' admissions data does not provide an accurate picture of disparities within the Asian American community in Boston in selective schools' admission;
- The importance of diversity on all measures for educational experiences and outcomes for all students; and
- Additional facts surrounding the Exam School Admissions Criteria Working Group's recommendations.

INTERVENORS' STATEMENT OF ADDITIONAL MATERIAL FACTS

I. Background

1. Attached hereto are declarations of the Intervenor's describing their and their members' interests in this lawsuit. [Exhibit 1; Exhibit 2; Exhibit 3; Exhibit 4; Exhibit 5; Exhibit 6]
2. Neither the individual students whom the Plaintiffs represent nor the individual students who are Intervenor's have received admissions decisions from Boston's highly selective public schools for the 2021-22 school year.

II. The COVID-19 Pandemic and Events That Preceded It Necessitated Changes to the Admissions Policy for the Highly Selective Schools for the 2021-22 School Year.

3. On February 4, 2020, the Educational Records Bureau announced that it had informed BPS in April 2019 that the District would not be permitted to use the ISEE after the Fall of 2019. [Exhibit 7]
4. Dr. Thomas R. Rochon, President of ERB, said: “Our decision to no longer supply the ISEE for admission purposes in the BPS exam schools was made because the District continues to utilize ISEE scores in ways that do not align with ERB implementation guidelines or best practices in admissions.” [Exhibit 8] (containing email from Dr. Rochon)]
5. On March 26, 2020, the Commissioner of Elementary & Secondary Education, Jeffrey C. Riley, provided remote learning recommendations to Massachusetts school districts. The Massachusetts Department of Elementary and Secondary Education (DESE) “strongly” recommended that school districts alter their grading structures to account for the disruption to student learning. [Exhibit 9]
6. DESE issued subsequent remote learning guidance after the Governor ordered schools to remain closed for the remainder of the academic year. After reaffirming the recommendation to grade on a “credit/no credit” basis, DESE further recommended that districts promote students to the next grade level. [Exhibit 10]
7. In July, the Chief of Student, Family and Community Advancement Monica Roberts stated that parents expressed concerns about the fall administration of the Measures of Academic Progress (MAP) Growth assessment for exam school admission including: 1) access to test prep materials and the BPS Exam School Initiative prep program; 2) the impact of potential trauma and learning loss during COVID related closure; and 3) the use of student grades under the remote learning grading plan. [Exhibit 11 at 13]

III. The COVID-19 Pandemic Has Had a Disproportionate Impact on Boston’s Low-Income Students and Students of Color.

8. In the midst of the COVID-19 pandemic, Black, Latinx, and low-income students continue to experience food and housing insecurity at disproportionate rates compared to their White counterparts. [Exhibit 12]
9. A 2020 national poll from Harvard School of Public Health, National Public Radio, and Robert Wood Johnson Foundation reported that 37 percent of Asians experienced serious financial problems, compared with 72 percent of Latinx and 60 percent of Blacks. [Exhibit 13; Exhibit 14]
10. The COVID-19 pandemic exacerbated existing disparities amongst Boston Public School students, including with respect to:
 - a. food insecurity amongst school-age children [Exhibit 15];

- b. access to at-home support for students [Exhibit 15];
- c. access to Chromebooks to participate in remote learning [Exhibit 16]; and
- d. IEP/language access services [Exhibit 17; Exhibit 18; Exhibit 19].

IV. The Diversity of Boston’s Highly Selective Schools Has Been a Topic of Concern and Discussion for Many Years.

- 11. Massachusetts publishes data regarding the racial demographics of the total BPS student body and by school. [Exhibit 20; Exhibit 21]
- 12. BPS’s three selective admissions schools: Boston Latin School (“BLS”), Boston Latin Academy (“BLA”), and the John D. O’Bryant School of Mathematics and Science (the “O’Bryant”) do not reflect the diversity of the BPS student body as a whole. [Exhibit 22 at 1]
- 13. BPS adopted an exam as part of the admissions criteria for its three selective admissions schools during the 1963-1964 school year. [Exhibit 23]
- 14. The admissions process for BPS’s highly selective schools has long been contentious and has been the subject of several federal court lawsuits. *See Morgan v. Kerrigan*, 401 F. Supp. 216, 258 (D. Mass. 1975); *McLaughlin v. Boston Sch. Comm.*, 938 F. Supp. 1001, 1018 (D. Mass. 1996); *Wessmann v. Gittens*, 160 F.3d 790, 792-93 (1st Cir. 1998).
- 15. In May 2016, the NAACP and other civil rights organizations sent a letter to BPS highlighting disproportionately low numbers of Black and Latinx students enrolled at BLS, together with research suggesting that the recent racial harassment at the school could be due, in part, to such disproportionality. [Exhibit 24]
- 16. On May 9, 2017, the NAACP and other civil rights organizations released a report on selective public schools highlighting how disparities could not be explained by a lack of qualified Black, Latinx and otherwise diverse applicants. [Exhibit 22] The report received significant media attention and BPS officials commented on it.
- 17. Using GPA as an admissions criterion is problematic because of variation in grading across BPS public schools, charter schools, and private schools. [Exhibit 22; Exhibit 25]
- 18. In 2019, the NAACP and other civil rights organizations released another report, again arguing that BPS’s admissions criteria for its selective public schools was unfair and inequitable and exposed BPS to legal liability from Black and Latinx and other diverse students disparately impacted by the policies, and recommended reforms. [Exhibit 26; Exhibit 27]

A. BPS’s Selective Public Schools’ Admissions Data Does Not Provide an Accurate Picture of Disparities Within the Asian American Community in Boston in Selective Schools’ Admission.

19. BPS and the Massachusetts Department of Education have historically failed to collect enrollment data based on ethnicity, language and income.
20. Asian Americans and Pacific Islanders comprise 48 ethnic subgroups that speak over 300 languages with a range of immigration histories. [Exhibit 28 at vii]
21. Aggregating data of Asian Americans on multiple levels masks the differences among subgroups as well as the significant disparities that exist. [Exhibit 29 at 7-8, 15-18; Exhibit 30]
22. Based on disaggregated data, Southeast Asian subgroups have the lowest education attainment rates and income levels in contrast to East Asian and South Asian ethnic subgroups. [Exhibit 31 at 8; Exhibit 32]
23. Socioeconomic background and patterns of immigration are significant factors shaping the range of education attainment among Asian American subgroups. [Exhibit 31; Exhibit 32]
24. Vietnamese Americans comprise 69% of the foreign-born population in Boston, the highest rate among other Asian American subgroups. [Exhibit 33 at 15; Exhibit 34]
25. Vietnamese and Chinese households have some of the highest poverty rates in Boston. [Exhibit 35 at 31]
26. The median household income of Boston's Vietnamese is \$33,333 and Chinese is \$24,266, at least 50% less compared to the median household income for Asians in Massachusetts at \$77,649. [Exhibit 35]
27. Based on 2006-2010 American Community Survey 5-year estimates, two out of five Vietnamese American youth in Boston live in poverty, a similar rate to Latino youth and among the highest rate across both racial and ethnic groups. [Exhibit 33]
28. Among the Asian subgroups in the Commonwealth, Vietnamese Americans have lowest education attainment rates. [Exhibit 35 at 32, 34]
29. The percentage of Asians in Dorchester zip code 02125, highlighted in Plaintiffs' Complaint Exhibit E, is 10.9%, which is higher than the 9.6% average of Asians in the City of Boston. Similarly, in nearby Dorchester zip code of 02122 and Roxbury zip code of 02120, the percentage of Asians is 21.3% and 17.4% respectively.

V. Diversity Is Important to Guard Against Socioeconomic and Racial Isolation and Harassment and to Improve Educational Experiences and Outcomes for Everyone.

30. "[S]tudents benefit significantly from education that takes place within a diverse setting." [Exhibit 36 (statement adopted by 62 leading North American research universities)]

31. “[S]tudents encounter and learn from others who have backgrounds and characteristics very different from their own.” [Exhibit 36; Exhibit 37 at 14 & nn.73-85]
32. “[A] racially integrated student body is necessary to obtain cross-racial understanding, which may lead to a reduction of harmful stereotypes and bias.” [Exhibit 38 at App. 4-5, App. 3-6 nn.4-13]
33. “On average, students in socioeconomically and racially diverse schools—regardless of a student’s own economic status—have stronger academic outcomes than students in schools with concentrated poverty.” [Exhibit 39 at 1]
34. “Attending racially diverse schools is beneficial to all students and is associated with smaller test score gaps between students of different racial backgrounds, not because white student achievement declined, but rather that black and/or Hispanic student achievement increased.” [Exhibit 40 at 12; Exhibit 37 at 13 & nn.59-72]
35. Research shows that “diverse classrooms, in which students learn cooperatively alongside those whose perspectives and backgrounds are different from their own, are beneficial to all students, including middle-class white students, because they promote creativity, motivation, deeper learning, critical thinking, and problem-solving skills.” [Exhibit 40 at 14]
36. Studies indicate that Black and White students who attended desegregated schools were more likely to live, work, and participate in desegregated communities. [Exhibit 41]
37. Diversity in the classroom is similarly linked to positive learning and civic outcomes for Asian American students. [Exhibit 42]
38. Racial homogeneity within a school contributes to higher rates of bullying. [Exhibit 43]
39. Integration of students across socioeconomic status also has an impact on educational attainment and student achievement. [Exhibit 44]

VI. Boston Public Schools Established a Working Group to Determine an Interim Admissions Policy for the Highly Selective Schools.

40. On October 5, 2020, the Working Group delivered a memorandum to Dr. Brenda Cassellius regarding admissions criteria for students applying to Boston’s exam schools for the 2021-22 school year. [Exhibit 45 at 2]
41. The October 5, 2020 Memorandum explains the Working Group’s rationale for its recommendation and sets forth its recommendation for an admissions process for students applying for admission to Boston’s exam schools for the 2021-22 school year. [*Id.*]
42. BPS’ Racial Equity Planning Tool creates a six-step process to operationalize a commitment to ensure each decision the school committee makes is aimed at closing opportunity gaps and advancing racial equity. The Planning Tool requires that decision

makers respond to the following six questions: (1) What is the proposal under considerations and the desired outcomes?; (2) What does the data tell us about the current situation for Black, Latinx, EL, and Special Education students?; (3) How have Black, Latinx, EL, Special Education, and economically disadvantaged students, families, staff, and other key internal and external stakeholders been engaged in considering and shaping the proposal?; (4) Given what we learned from steps #2 and #3, what are our strategies for advancing racial equity?; (5) What is our plan for implementation; and (6) How will we ensure accountability, including evaluating communicating results? [Exhibit 46; Exhibit 47]

43. While presenting its recommendation before the School Committee on October 8, 2020, the Working Group emphasized: 1) the difficulty of logistics for in-person exam administration; 2) the inability to ensure test security in remote test administration; 3) concerns with the exam's ability to assess students' preparedness for exam school classes in light of the educational disruption caused by COVID-19; and 4) the disparate impact of educational disruption on low-income families and families of color. [Exhibit 48 at 9]
44. In response to the October 8, 2020 presentation, several School Committee members asked whether the proposal could replace zip codes with geo codes, establishing smaller catchment areas. BPS informed the Working Group that it did not have the necessary data to make the switch. [*Id.* at 12]
45. As presented to the School Committee on October 21, 2020, the Working Group proposed that "20% of seats in each exam school will be filled using GPA only, placing the top ranking students citywide." [Exhibit 49 at 6] The remaining seats will be apportioned "based on a combination of zip code and GPA." [Exhibit 49 at 7]
46. Under the Working Group's recommendation, the seats will be filled through a series of ten assignment rounds, each of which will assign 10% of the seats within that zip code. [Exhibit 49 at 7] "Zip codes will be ordered from the *lowest median family income (with children under 18) to the highest median family income (with children under 18)* according to the American Community Survey. Students in the zip code with the lowest median family income (with children under 18) will be placed first, followed by students in the next zip code." [*Id.*]
47. The October 21, 2020 meeting of the Boston School Committee lasted eight hours. [Exhibit 50 at 1, 14 (reflecting the meeting began at 5:00 p.m. and ended at 2:02 a.m.)] During this meeting, the School Committee discussed the proposal from the Exam Schools Admissions Criteria Working Group. [*See id.* at 6-9.]

Respectfully submitted,

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE
BOSTON BRANCH AND OTHER
INTERVENORS

By their attorneys,

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Dated: March 15, 2021

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants on March 15, 2021.

/s/ Doreen M. Rachal
Doreen M. Rachal